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even in different orders, as a distinct one. 'We have here an animal,' says Dr Harlan, speaking of the Rocky Mountain sheep, 'described for the first time in 1816, which has already been classed under four distinct genera, with nearly as many specific appellations.' To mend the matter, Dr Harlan places it under a fifth genus. For the pronghorned antelope, an animal of recent discovery, we have no less than half a dozen different names.

We cannot close this article, without expressing regret and strong disapprobation, at the manner in which are written two long notes in Dr Harlan's book, (pp. 140, 143,) concerning certain differences into which he has unluckily fallen with other naturalists, in describing and naming some species of the genus Arvicola. The contest maintained in these notes is quite below the dignity of science. With whom the fault rests, it is not for us to inquire, but we feel justified in saying, that, when personal jealousy is allowed to have an influence in constructing new genera and species, and when *nobis* is arrayed against *nobis* with an air of triumph, no good hope remains for the accuracy of investigations thus pursued, nor for the aid they will lend to the progress of genuine science.

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ART. VII.—*Report of the Committee of Foreign Relations, of the House of Representatives of the United States, to which were referred the Memorials of certain Merchants, praying Relief for Losses sustained by French Spoliations.* 1824.

THE claim of the citizens of the United States for French spoliations, is one of immense amount. Studious to avoid exaggeration, and to reduce our statements even within the severest truth, we rated, in an article in our last number, the whole amount of American claims for foreign spoliations of all kinds, at twenty millions of dollars. Our readers will probably think we greatly erred on the side of moderation, when it is recollected, that Messrs Pinckney, Marshall, and Gerry, in 1799, stated the claim for French spoliations alone

at fifteen millions, and that it has been sometimes computed, that, under the French imperial decrees, over fifty millions of American property were confiscated. If these estimates be thought extravagant, our own will be allowed to be exceedingly modest.

In our last number, we gave a very brief sketch of one portion of the French claims. Those claims may very suitably be divided into two general classes, those arising out of spoliations and other sources, prior to the Louisiana Convention in 1803; and those subsequent to that period, growing out of the outrages exercised upon our commerce, under the renowned imperial decrees. The state and prospects of these two sorts of claims are entirely dissimilar, and they will therefore require to be separately treated.

The few remarks which we made, in the article above mentioned, were confined to the claims of the first class, being such whose obligation is alleged by the claimants, to have devolved upon their own country, in consequence of a voluntary renunciation of them by the government of the United States, on behalf of its citizens, in consideration of certain renunciations made by the government of France, of political claims upon the United States. Having in our former remarks, for the sake of brevity, treated this claim as one, without distinctly severing from each other those portions that were, and those that were not, provided for by the Louisiana Convention, we shall now, for the sake of clearness, consider each class separately; a course of proceeding dictated by the very different ground, on which the two classes have been made to stand, by the measures pursued for their recovery.

We shall now consider the claims, which were excluded from the Louisiana Convention; and briefly relate the history of the manner, in which they arose, were prosecuted, and renounced. By the treaty of commerce and amity, concluded between the United States and France, in 1778, the principle of *free ships free goods* was solemnly recognised in the twentythird article, and an undisturbed liberty of trading to the enemies of either party, was respectively stipulated to each other by the United States and France. In violation of this article of the treaty, then in force, on the ninth of May 1793, the French National Convention passed

a decree,* declaring enemy's goods on board neutral vessels lawful prize, and directing the public and private armed vessels of France, to bring into port neutral vessels laden with provisions, and bound to an enemy's port.

On the appearance of this decree, Mr G. Morris, then our minister at Paris, remonstrated against it, and so far prevailed, that the National Convention, on the twentythird of the same month, declared, 'that the vessels of the United States are not comprised in the regulations of the decree of the ninth of May.' In communicating this gratifying declaration to Mr Morris, the French minister for foreign affairs, le Brun, observed, 'You will there find a new confirmation of the principles, from which the French people will *never depart*, with regard to their good friends and allies, the United States of America.' This letter of le Brun's was dated May 26th; and on the 28th of May, the declaration communicated in it was *revoked* by the National Convention! Such was the levity of that atrocious assemblage. The truth was, the owners of a French privateer, having captured a very valuable American ship, the Laurens, bribed the leaders of the Convention to rescind, on the twentyeighth, the declaration which they had made on the twentythird, and which the minister of foreign affairs had communicated to Mr Morris, on the 26th of May. So little disguise was necessary in these affairs, that the owners of the privateer boasted beforehand, that the declaration of May 23d would be rescinded.

Mr Morris again remonstrated and with success. On the first of July the Convention revoked their last order, and again liberated the commerce of the United States, from the operation of the original decree of May 9th; and this revocation was declared to be made, in conformity with the provisions of the treaty of 1778. M. Desforgues, who had succeeded le Brun, as minister for foreign affairs, in communicating this revocation to Mr Morris, observes, 'I am very happy in being able to give you this new proof of the paternal sentiments of the French people for their allies, and of their determination to maintain, to the utmost of their power, the treaties subsisting between the two republics.' In twentyseven days this last decree was repealed. We would here

* See the decree at large, in Wait's State Papers, III, 42.

notice an oversight of the Committee, who made the report of April, 1802. They state, that 'the decree of May 9th, after having been several times repealed and reenacted, was finally repealed on the 27th of July following.' Far otherwise. The decree of May 9th, after having been twice revoked, was finally restored, in its application to American vessels, July 27th, in permanent violation of the twentythird article of the treaty of 1778. The only relaxation made, was the exemption from capture of American vessels, bound with provisions to an enemy's ports.

In the course of the years 1793 and 1794, a new source of injury arose, in a long and distressing embargo at Bordeaux. A list of one hundred and three American vessels detained under this embargo, to the incalculable detriment of the property embarked in them, was drawn up by Mr Skipwith, on the 20th of November, 1795. As the claims for indemnity, for losses sustained by this embargo, formed a portion of those provided for by the Louisiana Convention, no further account of them would be here in place.

The number of American vessels seized and sent into France, under the decree of May 9th, 1793, or detained by the embargo, or in other ways, was so great, that Mr Monroe, who succeeded Mr Morris, was led to constitute Mr Skipwith a general agent, for collecting and presenting them to himself and the French government. In the performance of this duty, an amount of injury and outrage inflicted by France, on our commercial interests, was disclosed, which can now scarcely be credited. Mr Skipwith drew up a report, bearing date October, 1794, and addressed to Mr Monroe. After observing, that he has not as yet received from the consuls all the documents, necessary for presenting a full view of these injuries and outrages, he adds, 'from the communication, however, already received from the different ports, and from the information I have collected from the captains present, I can assure you there are near three hundred sail of American vessels, now in the ports of France, all of whom have suffered, or are suffering, more or less delay and difficulties, of which the examples annexed will afford you a general view.'

Mr Skipwith then proceeds to enumerate and classify the modes and forms of the oppressive treatment, imposed upon the Americans, and names first,

'The capture *indiscriminately* of our vessels at sea, by the vessels of war of the republic.'

A copy of this report, accompanied with documents illustrative of its statements, was laid before the French government, and produced a joint decree of the committees of public safety, finance, commerce, and supplies, dated November 15th, 1794. This decree* revived and declared in force that of July 27th, 1793, above mentioned; it declared, that the principle of 'free ships free goods' should not be recognised in favor of the goods of any enemy, by whom it was not also recognised. It provided for the compensation of losses sustained by neutral vessels, in consequence of the embargo at Bordeaux, and for the payment of supplies furnished by Americans to St Domingo. The satisfaction yielded under these two last heads was partial, inadequate, and attended with great delay, while the provisions of the decree perpetuated some of the most serious violations of the treaty of 1778. This being the subject of continued and persevering complaints, made on behalf of our merchants, on the 4th of January, 1795, the committee of public safety repealed those parts of the decree of November preceding, which violated the treaty of alliance. The leaders in France, at this time, appear to have felt a wish to conciliate America, and such were the advices from our minister there, that General Washington, in his message to Congress, February 28th, 1795,† makes the following statement. 'Our minister near the French republic has urged compensation for the injuries, which our commerce has sustained from captures by French cruisers, from the nonfulfilment of the contracts of the agents of that republic with our citizens, and for the embargo at Bordeaux. He has also pressed an allowance for the money voted by Congress, for relieving the inhabitants of St Domingo. It affords me the highest pleasure to inform Congress, that perfect harmony reigns between the two republics; *and that those claims are in a train of being discussed with candor, and of being amicably adjusted.*'

In fact, as we have observed, the republic, at this time, seems to have been disposed to act with justice. Mr Skip-

* It may be found in State Papers, III, 53.

† Wait's State Papers, X, 402.

with was incessantly employed in prosecuting the various classes of claims, and large sums of money were actually paid, partly in specie, and partly in *assignats*, to our ship-masters and merchants.* Had the sums of money, thus appropriated, been promptly applied to a liquidation of each case of injury as it accrued, it is not impossible that they might have covered no small portion of what was due. The cruel delays, the subsequent destruction of perishable cargoes, the rotting of vessels at the wharves, the rapid depreciation of paper, produced the unfortunate result of a large provision made by the French, with very little benefit to the claimants.

The friendly disposition of the French government invariably fluctuated, with their political prospects. The success of Bonaparte in Italy, raised the crest of the conquering republic, and in the course of the year 1796, the old causes of complaint were revived, and new ones added. On the 2d of July, 1796, the favorable decree of January, 1795, was repealed by a new decree of the following purport, 'that all neutral or allied powers shall without delay be notified, that the flag of the French republic will treat neutral vessels, either as to confiscation, as to searches, or captures, in the same manner as they shall suffer the English to treat them.' Under color of this decree, the most wide spread devastation was let loose upon our commerce.

The subordinate agents of the Directory were forward to emulate the example of the government at home. On the 1st of August, 1796, Victor Hugues and Lebas, special agents of the Directory to the Windward Islands, made a decree, that all vessels loaded with contraband articles, were liable to seizure and condemnation, without making any discrimination in favor of those which might be bound to neutral, and even to French ports. The manner in which this and other similar decrees were enforced, was, if possible, more oppressive, than the decrees themselves. All legal forms were disregarded, and the mode of proceeding was reduced to the exercise of brute force. One example may suffice. The Patty sailed from New London on the 31st July, 1795, (of course before the decree last mentioned was made in the

* The document marked D, State Papers, III, 56, will sufficiently illustrate this remark.

West Indies, to say nothing of being known in America,) bound to St Barts. On the 2d of September, the vessel was captured by a French cruiser, and carried into Guadaloupe. The captain was taken before Victor Hugues, whose first words, accompanied by his fist thrust into the captain's face, were, 'I have confiscated your vessel and cargo, you —— rascal.' Three days after, the captain inquired of Victor Hugues when his vessel and cargo would be tried; and the answer was, they had already been tried, and the captain might go about his business. The captain afterwards received a certificate of his trial and condemnation; but in many cases even this poor favor was insultingly refused; and our unfortunate ship masters, ignorant of the language, without friends, beset by the harpies of office, stripped even to their clothes, and often personally assaulted, were left to beg their way to some neutral island, before they could even make their protest.

These crying insults seemed to grow into a sort of pastime, with the petty tyrants of the day. On the 27th of November, the same year, another decree was passed by a new set of commissioners to the Windward Islands, which ought to be quoted entire.

'The Commission resolves, that the captains of French national vessels and privateers, are authorised to stop and bring into the ports of the colony, American vessels bound to English ports, or coming from the said ports.'

'The vessels, which are already taken, or shall be hereafter, shall remain in the ports of the colony, till it shall be otherwise ordered.

'At the Cape, the 7th Frimaire, in the fifth year of the French republic, one and indivisible.'

'Signed on the record of the procès verbal; Leblane, president; Santhonax, Raimond, commissioners; Pascal, secretary general.'*

This most extraordinary violence was not confined to the petty tribunal, from which the decree in question was issued. Captures were made by the French privateers, in Europe, on the ground that all American vessels coming from, or bound to England, were good prize, and the French consul at Cadiz avowed his determination to condemn them, appealing to the decree of the Directory of July 2d, 1796, for his warrant.

* State Papers, III, 55.

On the 5th of February, 1797, another decree of Hugues and Lebas authorised the capture of all neutral vessels, destined to any of the Windward or Leeward Islands, in America, which had been delivered up to the English, and occupied or defended by emigrants, viz; Martinique, St Lucie, Tobago, Demarara, Berbice, and Essequibo, for the windward isles; and Port au Prince, St Marc, L'Archaye, and Jeremie, for the leeward. All vessels sailing to and from any of the islands, are, with their cargoes, declared good prize by this decree, as well as all vessels, 'which shall have cleared out under the *vague* denomination of the *West Indies*.'*

On the 2d of March, 1797, the Directory issued a decree, prefaced by a laborious preamble, in which almost all the previous oppressive regulations were reenacted, and new and exceedingly injurious ones added, especially that notorious one relative to the *Role d' Equipage*, which swept so much of the remnant of our commerce from the seas. This decree formally declared, that the treaty of 1778 should be modified, in conformity with the provisions of Jay's treaty with England; in other words, that, in some of its most characteristic features, it should be annulled.

The manner in which this, as well as all the other decrees, was enforced, added much to its severity. It was not merely applied from the date of its publication, but a retrospective action was given to it, against American ships, which had previously, on any other pretence, or no pretence, been sent into France. The number of vessels captured, under this last decree, was very great. Between August, 1796, and June, 1797, according to a list prepared for the Philadelphia Gazette, and probably not containing all the cases, three hundred and eight American vessels suffered under the illegal decrees of the French; the greater part of them after that of March 2d was issued. Not content with the comprehensive terms of the decrees, the French officers and agents subjected the captains and seamen to personal violence, in order to extort from them, by extreme pain, testimony that would condemn their vessels. Mr Rufus King, then, as now, our minister to London, in a letter bearing date April 19th, 1797, mentions the case of Captain Martin, of the Cincinnatus of

* See the Decree; State Papers, III, 32.

Baltimore, who was taken on board the French cruiser that had captured his ship, 'and tortured for more than three hours,' to induce him to make such declarations, concerning his ship and cargo, as would procure their condemnation. 'Captain Martin's thumbs,' adds Mr King, 'which I examined, bear the marks of the screws, and the scars will go with him to his grave.'

In the decrees, of which we have now enumerated the chief, and in captures, seizures, and spoliations, committed by the French cruisers on American vessels indiscriminately, without the authority even of these decrees, such as it was, originate the claims we are now considering. They formed, of course, a standing subject of reclamation and of complaint, on the part of our successive Ministers to France, Mr Morris, and Mr Monroe; and they were to have been pressed by General Pinckney, had he been received by that government as Mr Monroe's successor. On the failure of his separate embassy, a commission of three envoys, Messrs Pinckney, Marshall, and Gerry, was sent to France; but, as is well known, this commission was not received by the Directory. The subject of the claims of our citizens on France, of every description, was particularly treated in their instructions; and after an enumeration of these claims, in their general nature and quality, it is observed in the instructions as follows; 'Although the reparation for losses sustained by citizens of the United States, in consequence of irregular or illegal captures or condemnations, or forcible seizures or detentions, is of very high importance, and is to be pressed with the greatest earnestness, yet it is not to be insisted upon as an indispensable condition of the proposed treaty. You are not, however, to renounce these claims of our citizens, *nor to stipulate that they be assumed by the United States, as a loan to the French Government.*' This last clause referred to a proposal, already made by France to our government, and repeated in one of the unofficial communications of the emissaries of Talleyrand with our envoys, that the United States should assume this debt as a loan to France.*

During their residence in France, though not received by the Directory in an official character, our envoys addressed

* State Papers, IV. 12.

a most able memorial to the French minister, in which they divide the American claims into two classes. The first consists of such, as are uncontroverted by the French Government, and are substantially those provided for by the Louisiana Convention. After enumerating the varieties of claims in this class, our envoys add, that 'they pass to complaints still more important for their amount, more interesting for their nature, and more serious in their consequences,' viz. the spoliations under the various decrees of the French Government, issued in violation of the treaty of 1778, and of the law of nations. It is worthy of particular notice that, under the head of claims uncontroverted by France, are those for captures under the decree of May 9, 1793.

In a conversation between Talleyrand and our envoys, detailed in the journal of the latter,* the French minister endeavored to induce our envoys to assume the claims of our citizens, as a loan to France, remarking that they 'had claims on the French Government for property taken from American citizens. *Some of those claims are probably just.*' In the negotiation of Talleyrand with Mr Gerry, after the departure of the other ministers, a negotiation which may be called official, the French minister thus expressed himself. With respect to 'the claims of American citizens on the French republic, if the latter should not be able to pay them when adjusted, and the United States would assume and pay them, France would reimburse the amount thereof;'† and, in this proposal, Mr Gerry expresses the opinion, that Talleyrand was sincere.

The manner in which the embassy of the three envoys terminated, and the appointment of another, the following year, are too familiar to be dwelt upon. The instructions to the second commission, consisting of Messrs Murray, Ellsworth, and Davie, have not been made public. They form a part of the papers, whose communication was asked by the Senate and House, at the close of the first Session of the eighteenth Congress, and then delayed on account of their voluminousness. As the state of things, with respect to the claims, was not at all changed, since the instructions of Messrs Pinckney, Marshall, and Gerry were drawn up, it is highly probable

* State Papers, IV. 89. † State Papers, IV. 160.

that the same instructions were given to Messrs Murray, Davie, and Ellsworth; that they were directed to press the claim as of high importance, by no means to renounce it, but not to make it a *sine qua non* condition of the treaty to be negotiated.

The new American Commission found a new government in France. The result of the negotiations of our envoys was the Convention of 1800. The second article of that Convention is in the following terms; 'The Ministers Plenipotentiary of the two parties, not being able to agree, *at present*, respecting the treaty of alliance of 1778, and the treaty of amity and commerce, of the same date, and the Convention of November, 1788, nor upon the indemnities mutually due or claimed; the parties will negotiate further on these subjects, at a convenient time, and until they may have agreed upon these points, the said treaties and Convention shall have no operation.'

The fifth article provides for a liquidation of debts between the two countries, as if no misunderstanding had happened; but this provision was not to extend to indemnities claimed for captures and confiscations.

The Convention was sent to the United States, and ratified in the Senate, with the exception of the second article, which provided for further negotiation on the indemnities mutually claimed or due.

In this form the Convention was returned to France, and Mr Murray was immediately interrogated by the French Government, as to the motives of the American senate in expunging the second article. As Mr Murray's correspondence has not been officially communicated, his statements to the French Government, on this subject, are not certainly known. He is understood, however, to have accounted for the expunging of the second article, from the wish of the Senate to preclude any future standing subject of contention between the two governments, such as a reserved negotiation of this kind would be. The French Government are supposed to have stated, that a simple omission of the article, unaccompanied by a mutual renunciation, would operate to their prejudice. The claims of France on America rested on the provisions of the treaty of 1778, and the Consular Convention of 1788. These treaties ceasing to exist, France

would lose all claim on America; whereas the American claims having a basis, not only in the treaty, but in the law of nations, would still lie against France. To avoid this disadvantageous result, the French Government is understood to have proposed this alternative; either to omit the second article, accompanying the omission with a mutual renunciation, or to abandon the Convention entirely, and to leave the treaty of 1778 in force. Our minister accepted the former part of the alternative, and the treaty was ratified by Bonaparte, as First Consul, omitting the second article, with a note attached, declaring that this omission was considered by the parties, as a mutual renunciation of their claims. The Convention came back to the United States with this conditional ratification, and on the 19th of December, 1801, the Senate resolved, 'that they considered the same Convention as fully ratified.'

With respect to the claims of France on America, which are brought forward as an offset to the claims of America on France, a full idea of them cannot be obtained, without perusing, in the State Papers, the correspondence between the several Ministers of the French Republic in America, with our government here; the Reports made by the American Secretary of State upon this point; the correspondence of the American Secretary with General Pinckney, and the memoir addressed by Messrs Pinckney, Marshall, and Gerry to Talleyrand. The two gravest matters in controversy, however, can be specified in a word, the guaranty of the French possessions in the West Indies, and of aid to be rendered France by America in defensive wars; stipulated by the treaty of 1778, and the privileges claimed by France for her consuls, under the Consular Convention of 1788. By the guaranty, America was unquestionably bound to France, to an extent indefinite and uncertain, but calculated to be very onerous. The extent of this obligation may be partly estimated, from that clause in the instructions of our government to Messrs Pinckney, Marshall, and Gerry, which authorised them to propose to the French Government, in time of war, an annual subsidy of two hundred thousand dollars, in lieu of a specific fulfilment of the guaranty. Considering this as the voluntary offer of our government, and also bearing in mind the odious nature of a subsidy in the estimation

of a people like the American, it is easy to infer that this treaty of 1778, was regarded as a very heavy burden by our statesmen. The editor of the edition of the Laws of the United States, whose exact acquaintance with our political history is apparent throughout the work, in a note subjoined to the Convention of 1803, after sketching the history of our relations with France, adds, 'by that Convention, (of 1801,) among other things, the United States were exonerated from the weighty responsibility imposed, by the treaty of alliance of 1778, of a guarantee of the French possessions in America.'

Such, therefore, was the mutual renunciation, on the part of the United States and France. The latter renounced her claim upon the United States, for the fulfilment of the stipulations of the treaty of alliance, and for indemnity for injuries alleged to be sustained by France, from the failure of the United States of America to fulfil those stipulations, and also from the alleged inexecution of the Consular Convention of 1788. The United States renounced the claims of her citizens, for spoliations and injuries, under various decrees of the French Government, issued in violation of the treaty of 1778, and of the law of nations.

We shall now pursue briefly the history of the manner in which the citizens of the United States, whose claims were renounced by their own government, in consideration of a great national and political object, have sought relief and indemnity.

The year after this Convention was ratified, viz. in 1802, sundry citizens and claimants, whose rights were affected by it, applied to Congress for relief. Their memorials were referred to a committee, who made an elaborate report, consisting chiefly of an enumeration of the violent and illegal decrees of the French; of the measures adopted by our government to procure or enforce redress; and of the negotiation of the Convention of 1800. After going through this historical detail, the report of the committee closes with the following paragraph,—

'It appears, that the exclusion of the second article of the Convention was considered as a renunciation of the indemnities, claimed by the citizens of the United States of America, for spoliations and depredations upon their commerce, so far as the government might

otherwise have been instrumental in obtaining such indemnities. Upon the whole view of the case, the committee submit it to the House to determine, whether the government of the United States be, in any respect, bound to indemnify the memorialists; and whether there be any ground for discrimination between the cases of losses sustained before the Acts of 28th of May, 1798, the 7th of July, 1798, and the 9th of July, 1798, and cases of losses sustained after those periods.'

The acts of Congress here alluded to, are those authorising the capture of French vessels of war hovering on our coasts, and repealing the treaty of alliance of 1778. Their bearing on this question will presently be the subject of a few remarks.

It will be perceived, from the paragraph we have cited from the report of the committee, and which is the only portion of the report from which the judgment of the committee could be inferred, that the fact of the renunciation of these claims, by our government, is admitted. The committee add the qualification, 'so far as the government might have been instrumental in obtaining such indemnities.' But there is nothing, that we can perceive, in the facts of the case, to authorise this qualification. The renunciation is unlimited and unconditional. Our government renounced not only its own right to prosecute the claims, but the right of the citizens to prosecute them, on their own account. This report of the committee came before the House, was several times discussed, but never acted upon finally. Efforts were made to procure a resolution, providing for the indemnification of the claimants, and it is understood that the divisions of the House, on this question, were in a considerable degree in accordance with the grand political division of the parties. This was the unavoidable result of the state of political controversy in the nation. The late administration had gone out of power, under the stigma of attachment to England, and hostility to France. The claimants, in their declaration, were obliged to set forth and urge the aggressions of France, and this course of proceeding connected itself too directly with the general questions between the parties, not to produce a strong prejudice against the claim.

In the year 1807, the question was again brought forward by memorials from sundry claimants. These memorials

were referred to a committee of the House, whose brief report was decidedly in favor of the claimants. After referring to the report of the committee of 1802, the committee in 1807 proceed;

'From a mature consideration of the subject, and from the best judgment your committee have been able to form on the case, they are of opinion, that this government, by expunging the second article of our Convention with France, of the 30th of September, 1800, became bound to indemnify the memorialists for those just claims, which they otherwise would rightfully have had on the government of France, for the spoliations committed on their commerce, by the illegal captures made by the cruisers and other armed vessels of that power, in violation of the laws of nations, and breach of treaties then existing between the nations, which claims they were, by the rejection of the said article of the Convention, forever barred from preferring to the government of France for compensation.'

'Your committee beg leave to decline giving an opinion on the precise time, when those claims ought to be commenced, or on the period for captures, after which the memorialists would not have been entitled to compensation from France, and of course cannot be entitled to indemnity from the United States.'

No relief to the claimants resulted from this report. The subject was revived in 1818, and as the act, by which the claimants were deprived of whatever remedy they could have had of the French government, was performed with the concurrence of the Senate, in the exercise of the treaty making power, memorials from Portsmouth, Philadelphia, Baltimore, and Charleston, were addressed to the Senate of the United States, and by them referred to the committee of claims, by whom an unfavorable report was made.

In 1822 an application was made by a few merchants of Baltimore, who addressed their memorial to the House of Representatives, in which body it was referred to the committee of foreign affairs. They reported against the claim, partly on general grounds, and partly on circumstances peculiar to the application in question.

Here it is possible all prosecution of the claims would have ceased, but for two considerations, calculated to stimulate the hopes, and to heighten the sense of wrong of the claimants. One of these considerations respected the *denouement* of the great tragedy of the French Revolution. It had always been

objected to these claims, that in renouncing them, the government of the United States renounced nothing of value. That the claim was worth nothing, because France would not have paid it; because, after a long and earnest negotiation, all that our commissioners could procure was a consent, on the part of the French, to negotiate further. While Bonaparte or his dynasty subsisted, this language was plausible, and every year rendered it more plausible. But an astonishing revolution had occurred; his throne was prostrated; and the ancient dynasty was restored, by the combined powers of Europe, under a pledge compulsory, if not voluntary, to pay the debts of France. Under this circumstance, claims of old and forgotten obligation revived, as from the dead. The losses of English travellers, in the most lawless periods of the Revolution, the losses sustained by payments in *assignats*, the nameless and numberless encroachments on property, which signalised that stormy and perplexed crisis in Europe, were all now sternly forced into the account to be liquidated. They had been liquidated and paid. Our citizens alone could not come, and thrust the sickle into this waving yellow harvest of indemnity; their claim had been renounced by their own government. Farther, the government of the United States very properly seized this moment to bring forward the claims for losses, under the continental system of Napoleon. These claims were, and still are, pressed upon France. They must, they will be liquidated. But the claimants under the old system of plunder and spoliation cannot come in; their government has renounced their claim.

To strengthen the feelings which this contrast excited, the Florida treaty had just been negotiated. The claimants for French spoliations had already seen themselves shut out from the provisions of the Louisiana treaty. They had seen a class of claims, certainly not so binding on the national honor to assert, provided for out of the purchase money of that western world. This postponement of their rights was now repeated upon them. By the Florida treaty, an indemnity was provided for claims, many of them as old as theirs, and few more pressing, and which had as long been prosecuted without hope, and against hope.

These facts produced no little sensation throughout the country, among those interested; and about fifty memorials,

in the Session of 1823, 4, were presented to the Senate of the United States. A step was thereupon taken by this body, which is certainly preliminary to a fair discussion of the subject in Congress, in all its bearings. A call was unanimously made on the President, for all the official papers bearing upon the case. Pending the result of this call, a few memorials were prematurely presented to the House of Representatives, and by them referred to the committee of foreign relations. Considering the train in which things were placed, this was an unfortunate occurrence for the claimants, and doubtless had its origin only in inadvertence. An unfavorable report was made by the committee of foreign relations; but the decision upon it gave way to a resolution for a call, similar to that which had already been made by the Senate.

The lateness of the period at which these calls were made, and the great quantity of papers embraced in it, led to a report of the then Secretary of State, in the month of May, 1824, that the communication of the papers asked for, must be delayed till the following Session. The following Session, that of the presidential canvas, passed off without a renewal of the call; and it remains for the succeeding Congress to pursue the subject, as they shall think expedient. It is not impossible, that such new lights will be thrown upon the subject, by the communication of the papers alluded to, before these remarks are published, as to destroy the little interest they might otherwise possess. Inasmuch, however, as a great mass of documents may possibly come before Congress, we have thought that an analysis of the claim, such as we have now given, would, in any event, not be without its value. We now proceed to examine a few of the arguments, by which these claims have been resisted, by three out of five of the committees to which they have been referred.

The first, and perhaps the most formidable, is, that the United States, after negotiating with France, among other things, on indemnity for these claims, as long as negotiation was of any avail, but entirely without success, resorted to war as the remedy. When such a proposition is advanced, the acts of Congress of 1798 are considered as creating a state of war, and the captures made by our armed ships as acts of war. This, however, can only be admitted in popular language. Strictly speaking, a state of war did not exist.

No declaration of war, the only instrument by which a state of war can be formally constituted, was made, either by the United States or France. No authority to make reprisals was given to our citizens, a mode by which a state of war is sometimes indirectly brought on. This is a circumstance of great moment in this argument, because it was by reprisals, that the suffering merchants might have had the opportunity of indemnifying themselves. No captures of merchant vessels were made by our armed ships, and none were authorised to be made. What then was done? Authority was given to capture the *armed* vessels of France, that might be hovering on our coast, that had committed, or were likely to commit, violations on our commerce; and to recapture our vessels, which had been seized by the French. On the part of the French, not even these measures were retaliated. They had probably never intended to drive us to war; and at this moment the Directory felt weak. They embargoed our ships, but issued no orders for acts of hostility, either on our armed or unarmed vessels. After a few months they went further, and ordered such intimations to be given to Mr Murray, our minister in Holland, as led to the despatch of the second commission, Messrs Murray, Ellsworth, and Davie, by whom a convention, not a treaty, was negotiated.

The mode, in which the affair was prosecuted, shows that peace was considered as not interrupted; the treaty of alliance of 1778 was recognised as still in existence; the French national vessels captured were restored, and those which we had destroyed, or otherwise disposed of, were paid for. It is true the treaty of 1778 had been formally repealed, or declared not to exist, by an act of Congress. But most of the claims of our merchants rest not on infractions of that treaty, but of the law of nations. The act of Congress could effect nothing against claims already existing, and this is by far the greater part of those in question. Besides, it may well be a question, how far Congress can, by a direct act of legislative power, annul a treaty so as to affect obligations arising under it. At all events, the negotiations recognised no such effect in this act of Congress; they regarded the treaties, both of 1778 and 1788, as in existence, till abrogated by the convention of 1801. In fact, the whole negotiation of the convention

proceeds on the ground, that though misunderstandings had arisen, a state of peace had never ceased to exist.

The other chief argument against the claim is, that, though the government renounced it, they renounced it only to the extent in which indemnity could have been obtained from France; and as any indemnity was hopeless, at the time the treaty was made, our government did no injury to our citizens by this renunciation. This argument appears to us abundantly objectionable, both in principle and in fact.

It is objectionable in its principle, which is, that the government has a right to take the property of the citizen, simply because it takes but a small amount. The value of these claims, at that moment, might have been small; but they were still the property of the citizen. The indemnity due was a *chose in action*, of which the assignable value might be differently estimated by different persons, and rated high by none; still, however, the claimants had a right to it themselves; and if the government, for political objects, chose to divest them of this right, it is bound to make them a recompense.

To this it may be rejoined,—granted, but this recompense must be measured by the value of the thing sacrificed; that value was null; therefore the recompense must be nominal. This course of argument, however, is still more objectionable than the preceding. The value of a claim on the government of a civilised country, a permanent debtor, not exposed to the fluctuations of private fortunes, a debtor which, if unprosperous this generation, may prosper the next, and if now administered by an unjust military power, may soon be administered by rulers professing to be actuated by justice; the value of a claim on such a government is not to be estimated at its zero, because at some particular moment it happens to be worth nothing. The claim in question must be estimated according to the probability that France, in the long run, will pay its just debts. If the government of our country, therefore, sacrifices the claims of its citizens, without any compromise with them as to their indemnity, it assumes, in honor and justice, the whole debt.

This is peculiarly true, when it is considered that the value of the claim depends almost wholly on the government itself. If the government shows a disposition to abandon it, and to

tolerate its nonpayment by the foreign government, the value of the claim will, by this policy, sink to nothing. But will it be honorable, when this is done, for the government, after renouncing this claim, to withhold all indemnity from our citizens, and say, it is true we sacrificed your claims, but they were worth nothing to you, and we owe you no recompense? Might not the claimants justly reply; it is true, at that moment our claim was worth little, but it was you who sunk its value. Had you thought proper to engraft it on the everduring youth of the republic; had you told the French First Consul, that you would never renounce it, the rather as it was incurred under circumstances intimately affecting the American honor; that though you could not now enforce it against his colossal power, you would lay it up in your archives, to be reproduced when the arm of America should grow strong enough, to be lifted up with effect against the injustice of Europe, and still better, till France, the metropolitan region of civilisation, should again be governed by the principles of national justice; had you held this language, our claim would not have been worthless. But to sink the value of our property, and then tell us it is nothing worth; what is it but to act over on a large national scale, that detestable villany of our bankrupt monied corporations, who buy up at a discount their own worthless rags?

But we deny that the argument in question is sound in fact. We deny that the claim was worthless. Had it not been renounced, it would have stood on the same footing as the claims of our citizens against France, for losses sustained under the continental system of Napoleon, and the decrees enforcing it. Are they worthless? Is that claim good for nothing, which our government, by the instrumentality of Mr Gallatin, and other able negotiators, has declared to be founded in justice, and one which it is incumbent on France to pay? Is the property of our citizens, after the government of the country has formally taken the protection of it into its own hands, not worth anything? For ourselves, we should be sorry to say, that even in the hands of individual citizens, a claim on the justice of a government, like that of France, is worth nothing. But when our government has taken it up, and has instructed its ministers to assert its justice, then to say that it is worth nothing, is to say that our govern-

ment either cannot, or will not, procure its citizens justice. For ourselves, we believe that it both can and will, and we have no doubt the course it is pursuing will ultimately succeed. The French ministry have professed a willingness to examine the claim, and to settle an account with this country. They have indeed endeavored to clog the subject, by connecting it with absurd pretensions to privileges at New Orleans. But they have not shut their ears totally against it; it must, it will be recovered. But for the renunciation by the Convention of 1801, the claims in question would have formed a part of the general claim against France; for no one will say, that the present government of the country is not bound as much to make compensation for one, as for the other. The claim is against France; and France is as much accountable for the acts of her rulers from 1793 to 1800, as from 1805 to 1814.

Again, the claim was valuable, considered as a part of one large claim, a portion of which was actually, in two years, provided for. Up to 1800, no discrimination had been drawn between the different grounds, on which our citizens laid claim to indemnity. The merchant, whose property had been seized under an illegal decree of the National Convention, of the Directory, or of the special agents for the Windward Isles, was considered to have as good a claim on France, and to the aid of his own government in enforcing it, as the citizen whose vessel had been embargoed at Bordeaux, or who had made a contract with the French government for supplies, for which payment was withheld. The only difference in the cases was one strongly in favor of the former claim. The American citizen, who voluntarily makes a contract with a foreign government, has no claim on his own to go to war to protect him. But the citizen, who, lawfully pursuing his commerce on the high seas, is, in violation of the faith of treaties, and of the law of nations, arrested by the cruisers of a foreign power, acting under decrees as offensive to our national honor, as they are oppressive to private rights, is entitled to the national protection; his claim is strongest, by all the obligation which the government of the country has, to vindicate its honor and the inviolability of its flag. Accordingly, Messrs Pinckney, Marshall, and Gerry, after recapitulating the claims of a private nature, pass to those for

spoliations, as of far greater importance. And yet by the Convention of 1800, the claims for spoliations were renounced, and the private claims reserved; and, by the Louisiana Convention, provision was made for the payment of the latter. Now, could not the claimants for spoliations reasonably insist, that while the private claims were so valuable, the public ones, those for whose payment the honor of our government was concerned as much as that of France, should never be abandoned, nor sacrificed without an equivalent? Was it not reasonable, that if France had been brought to pay one part, she would sooner or later pay the other? And do we ascribe a becoming language to our government, when we represent it as saying to the claimants for spoliations, 'We have insisted, that the private debts of the French Government to our citizens shall be paid, but for the losses sustained under decrees affecting our national rights and sovereignty, we can and will do nothing for you.'

Again, let us consider the case of the Spanish claims. Who, in 1800, would have thought of preferring the Spanish claim to the French? Supposing their foundation in justice to be equally good, which no one will controvert, who would not have sooner expected justice from France than Spain; or rather, considering the relations of the two countries with each other, who would have expected any better result than that, whenever France should pay us, Spain would imitate the example? But yet, in the course of events, the Spanish claim has proved good; our government kept a protecting hand upon it, and in the end has succeeded in negotiating a treaty, by which it secured not only an ample indemnity to the claimants, but a great national object, second only in importance to the acquisition of Louisiana. With what reason then can it be urged, that a claim on France was worthless, when one on Spain has been liquidated almost at par?

It will be replied, perhaps, that the claim on Spain was always good, because there were vast Spanish possessions on our southern and south-western boundary; all Florida and Louisiana; out of which we might, in the last resort, take our indemnity, if we could get it in no other way; while France had no possession on which we could lay our hand. This, however, is arguing only from the position of things at the moment, without taking into view the astonishing mutabi-

lity of human affairs. It needs not be said, that to the eye of the statesman, no important political step would ever be contemplated, on the assumption that France had no territory in our vicinity. The monuments of French power and enterprise which encircle us, as with a belt, from Nova Scotia to New Orleans, would present themselves to his mind, and warn him that what had been might again be; while the shifting spectacle of every part of the world would confirm the truth, that nothing is more familiar in the political system, than a change of sovereignty in colonial possessions. How, in fact, can a suggestion now be plausibly made, that this claim was worthless, because France had no adjacent territories, which we could appropriate to ourselves, when it is considered that the very day after the Convention of 1800 was signed, France actually became possessed of territory on the American continent, more than equal to the whole of the United States, and that she was ready to cede this territory, and did cede it, on favorable conditions to us? No one can believe, that if the claim for spoliations had not been renounced, it would not, as well as the claim for private debts on France, have been compromised at the time of the Louisiana purchase. And it is equally apparent, that this immense, and, to the United States, all important territory, would have been abundantly valuable enough to furnish the means of the compromise.

Farther, that it can with no justice be said the claim was worthless, may be argued from the estimation in which it was held by our government, and by the French Government. Our government instructed its ministers not to renounce it; and these ministers estimated it at fifteen millions. The French offset this claim against all their claims on this country. It is necessary only to cast an eye over the correspondence of the French ministers to this country, to see that they regarded their claims as very important, and yet they offset them against the claim of our citizens for spoliations. We have already said, that our ministers were instructed to propose to France a subsidy of two hundred thousand dollars, in acquittal of one part of the obligations, which the treaty of alliance of 1778 imposed upon us. It is a fact, that may assist us to estimate the value of the claim, that the two governments agreed to offset it against all the French claims

on us, one single article of which, viz. the fulfilment of a part of the stipulations of the treaty of alliance, was estimated by our government, as worth a subsidy of two hundred thousand dollars per annum. This being the estimate of the paying party, it may well be supposed that France, the receiving party, would have estimated it much higher.

The truth is, if it be allowed that the claims mutually offsetting each other were of equal value, the claim of our citizens, so far from being worthless, was of immense importance. It would have been impossible to negotiate a Convention with France, on the basis of the old treaty. So much was the state of the world changed since 1778, that the old treaty could not have been enforced strictly, without dragging us into a war with England; nor could that treaty have been left in the situation in which it was placed by the acts of Congress of 1798, without bringing on a real war with Napoleon. A war with Napoleon, at that time, would have been, in human probability, most injurious to this country. It would have yoked us in a disastrous alliance with England, would have prevented our acquisition of Louisiana, and probably thrown it into the possession of the British. Now, there seems no possible way in which the claims of the French, to the permanent enjoyment of the advantages of the treaty of 1778, could have been compromised, but by this pecuniary arrangement. The French agreed to accept a renunciation of a claim on them, estimated at fifteen millions. Our government, wisely as we think, chose to purchase at this rate a fair and honorable settlement of our difficulties with France, with which country, in consequence of the antigallican spirit of a part of our own rulers, and the violence and injustice of those of France, our relations had become in the highest degree embarassed. How then can it be said, that the claim, whose renunciation was the basis of so happy a compromise, was of no value? It was of all the value, that peace with France was to the country.

It may be intimated, that our government would not have renounced it, had it been a valuable claim; to which we reply, that, however valuable, they would be still authorised to renounce it for an equivalent; which we have just shown they obtained. Moreover, we all know, not only that the government of our country esteemed the claim valuable, but

the value they placed upon it is known from the instructions to our envoys. It is true, it may justly be argued, that, if the claims were valuable, the government would not have renounced it, without designing to make compensation to the claimants. We may add, they could not constitutionally renounce it, without such intention; for in one of the amendments to the Constitution, which form the conditions, on which a large portion of the people of these United States accepted that instrument, it is provided, that 'private property shall not be taken for public use, without compensation.'

It is our firm belief, that the government of our country intended to make compensation. Motions to that effect were very early brought into Congress; they were supported by as large a number of its members, as could have been expected before the question had been agitated, and the claims urged. Meantime the Louisiana treaty came on, and there is much reason to think, that it was the intention of Mr Jefferson, to make the acquisition of that region the means of indemnifying our citizens, whose property had been renounced. No provision to this effect could have been introduced into the Louisiana Convention, because, as between France and us, the claim had ceased to exist. But Chancellor Livingston, who negotiated the purchase of Louisiana, expressly writes to our commissioners under it, Messrs Mc Clure, Mercer, and Barnet, that such part of the private claims on France, as the twenty millions of francs appropriated should fail to cover, must be paid by the United States. In like manner, we have no doubt, our government expected, that recompense should be made by the nation to those claimants for spoliations, whose just demands on the French Government had been renounced for the public service.

The low price at which Louisiana was bought, would have well enabled our government to raise a fund out of it for such a purpose. The purchase money was but seven and a half cents an acre, estimating the quantity of land acquired at two hundred million acres,* which is a low estimate, and the price of the land at fifteen millions of dollars.

* Seybert's Statistics.

The whole of Louisiana cost but three times as much, as was paid to quiet the various Mississippi Land Company claimants, or to purchase Florida. And what, in one word, may show the smallness of the sum of money that was paid for it, we need only add, that the poor negroes of St Domingo, to quiet the claims of the ancient proprietors, have paid thirty millions of dollars for the French part of that island, twice as much as the purchase money of Louisiana. It is, however, wrong to attempt, by a comparison of dollars and cents, to estimate the value of Louisiana to the Union; its acquisition is among the most important incidents in the history of the world; the silent peaceful extension, to half a continent, of the blessings of republican liberty. Nor does it admit a doubt, that our government, in making this purchase so low, designed that it should form a fund for the indemnification of those of its citizens, whose claims on France had in the general settlement been renounced.

It would not be difficult to point out, in the history of our politics, both foreign and domestic, the causes which have hitherto prevented this, or any other effectual measures for the relief of the claimants, but we regard this as a superfluous task. We also pass over many minor considerations, that have been or may be urged against any measures for granting this relief, such as the length of time that has elapsed, the large amount of the claim, the doubtful justice of parts of it. If we have succeeded in showing that it is in the main founded in justice; that the claimants could rightfully have demanded payment of France, and that our government renounced this claim for them, we have established our point. If we have made it farther apparent, that at the time of renunciation it was understood to be a claim of great value, and was an offset against important claims of France on America; if we have shown that its recovery from France was not so desperate, as to make its estimated value null; if we have made it clear, that but for this renunciation, the claim would now have stood on the footing of those, which the government is actively prosecuting, and will certainly enforce, we have established, as we conceive, a fair right on the part of the claimants to indemnity from their own government. Meantime we have no distrust of the national councils. It is likely, that when the papers, which have been promised

from the Department of State, shall be communicated, the subject will be fairly and adequately discussed, and that some compromise, satisfactory to the claimants, and not onerous to the country, will take place.

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ART. VIII.—*Ensayo sobre la Necesidad de una Federacion Jeneral entre los Estados Hispano-Americanos, y Plan de su Organizacion. Obra Póstuma del* H. CORONEL D. BERNARDO MONTEAGUDO. Lima. 1825.

THE alliance about to be established between the new American republics, by the delegates assembled at the Isthmus of Panamá, may with justice be considered among the most remarkable events of political history. Confederacies between independent states, for the purpose of consulting and supporting the common interest, have existed from early times. The governments of ancient Greece had their mutual compacts, their long sustained council of Amphictyons, and their renowned Achæan league; some of the minor states of modern Europe have from time to time followed their example; and we behold at this day, the colossal powers of the old world linked together to maintain their dominion, nay, to secure their safety. The influence of these confederacies has been important, in proportion to their extent and their objects, but none of them has existed under circumstances so imposing, or been instituted on principles so broad and just in their political bearings, or been calculated to affect so deeply and widely the destiny of future generations, as that about to be formed by the Congress of Panamá.

Polybius tells us, that it was the boast of the Achæan league, while the wise and politic Aratus was at its head, to be founded on the basis of equality and liberty, and that to this were mainly to be ascribed its strength and its increase. But every one knows what was Grecian liberty, even in the best days of Grecian prosperity. The balance, between the rights of the people, and the power of the rulers, was never well adjusted; the laws of nations were not understood, because practised on a narrow scale; commerce, that great